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No. 298] NEW DELHI, THURSDAY, DECEMBER 23, 1954

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**ELECTION COMMISSION, INDIA**

**NOTIFICATION**

*New Delhi, the 9th December 1954*

**S.R.O. 3646.**—Whereas the election of Shri Lal Shyam Shah, son of Shri Lal Bhagwan Shah, resident of Mouza Mohalla, Tahsil Sanjari Balod, District Durg, as a member of the Legislative Assembly of the State of Madhya Pradesh, from the Chauki Constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Sujaniram, son of Dariyao Singh of Village Koudi Kasa, Tahsil Sanjari, Balod, District Durg;

And whereas the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal;

On an appeal filed by Shri Lal Shyam Shah, the Supreme Court has set aside the said Order of the Tribunal declaring the election of successful candidate to be void *vide* the Supreme Court's Judgment, dated the 18th October 1954 (Annexure I).

**BEFORE THE ELECTION TRIBUNAL, NAGPUR**

**PRESENT:**

1. Shri N. H. Mujumdar, *Chairman*.
2. Shri S. C. Rai, *Member*.
3. Shri A. Razak, *Member*.

**ELECTION PETITION No. 2 OF 1953**

1. Shri Sujaniram, son of Dariyaosingh, age 44 years, cultivator of village Koudi Kasa, Tahsil Sanjari Balod, District Durg.—*Petitioner*.

**Versus**

1. Shri Lal Shyam Shah, son of Lal Bhagwanshah, age 31 years, *Ex-Zamindar*, resident of Mouza Mohalla, Tahsil Sanjari Balod, District Durg.—*Respondent*.
1. Shri R. M. Hazarnavis for the Petitioner, and
1. Shri M. N. Phadke for the Respondent.

## JUDGMENT

(Delivered this 16th day of January 1954)

(1) This is a petition under section 81 of the Representation of the People Act, 1951, challenging the election of the Respondent to the Madhya Pradesh Legislative Assembly from the Chauki Legislative Assembly Constituency. The petitioner has prayed that the election from the Chauki Legislative Assembly Constituency be declared wholly void or the election of the Respondent be declared void.

(2) After the last general elections, as a result of an election petition, the election of the candidate who had been elected from the Chauki Legislative Assembly Constituency was declared void and there was a bye-election in February 1953. The Petitioner and the Respondent contested the election at which the Respondent was declared successful and the result of the election was published in the Madhya Pradesh Gazette (Extraordinary), dated the 3rd March 1953.

(3) The Petitioner has asked for a declaration that the election was wholly void on the following grounds:—

1. The acceptance of the Respondent's nomination was improper as the respondent had failed to mention the area in relation to which the Gond Tribe, to which he belongs, had been declared to be a Scheduled Tribe, in the declaration attached to his nomination paper and had thus violated the direction in Proviso to section 33(3) of the Representation of the People Act;
2. The Respondent was guilty of major corrupt practices, because he induced or attempted to induce the Gond electors, who form a majority of the electors in the Chauki Legislative Assembly Constituency, to believe that they or persons in whom they were interested would be rendered objects of divine displeasure or spiritual censure if they did not vote for him, which amounted to exercising undue influence on the electors;
3. The Respondent posed as a spiritual head of the Gonds, and he and his workers took round the image of Angadeo and induced the voters to swear by Angadeo that they would vote for him. This also, according to the Petitioner, amounted to exercising undue influence on the electors;
4. The Respondent induced Shri Chaube, Forest Ranger Mohala, and Kotwars to proclaim by beat of drum between 9th February 1953 to 20th February 1953 that none had a right to Chari and Nistar in Government forests, which was a false statement. By such proclamation it was sought to be represented that the Congress Party had taken away the rights of the villagers to Chari and Nistar and this had the effect of marring his (Petitioner's) prospects and furthering the prospects of the Respondent in the election; and
5. The Respondent had obtained assistance of Patels and Mukaddams (Domarsingh, Shuklal, Raisingh and Mehar Singh) for the furtherance of his prospects in the election and was guilty of a major corrupt practice under section 123(8) of the Representation of the People Act, 1951.

(4) The allegations made by the Petitioner were denied by the Respondent and the following issues were framed. We have noted against each our finding thereon:—

ISSUES	FINDINGS
1 (a) Did the Respondent fail to mention the area in relation to which the Gond Tribe had been declared to be a Scheduled Tribe in his declaration attached to his nomination paper?	No.
(b) Does the Respondent's failure to mention the area in relation to which the Gond Tribe had been declared to be a Scheduled Tribe in his nomination paper	

ISSUES

FINDINGS

amount to violation of the direction in proviso to section 33(3) of the Representation of the People Act, 1951? .. .. . Does not arise.

If so, was the acceptance of his nomination paper improper? .. .. . No.

2. (a) Do the Gonds form a majority of electors in the Chauki Legislative Assembly Constituency? .. Not proved.

(b) Did the Respondent induce or attempt to induce the electors to believe that they or persons in whom they are interested would be rendered objects of divine displeasure or spiritual censure if they did not vote for him and did this amount to practising undue influence on the electors? .. No.

(c) Did the Respondent interfere with the free exercise of the electoral rights by the electors? .. No.

(d) Did the Respondent pose as the spiritual head of the Gonds and did he and his workers take round the image of 'Angadeo' and collect people belonging to the Gond community in *mandais* (fairs)? .. No.

3. Did they (the Respondent and his workers) induce the Gond voters to swear by 'Angadeo' that they would vote for the Respondent Lal Shyam Shah? .. No.

4. (a) Did the Respondent induce Shri Chaubey, Forest Ranger, Mohala, and Kotwars to proclaim by beat of drum between 9th February 1953 to 20th February 1953 that none had the right of Chari and Nistar in any Government forest? .. No.

(b) Had the Hon'ble Shri D. K. Mehta made a contrary declaration in January 1953? .. No.

(c) Was it proclaimed by the Forest Ranger and Kotwars that the rights of Chari and Nistar had been taken away by the Congress Party? .. No.

(d) Was this statement false? .. Does not arise.

(e) Was the statement widely published and did it have the effect of furthering the prospects of the Respondent in the election? .. Does not arise.

5. (a) Were Domarsingh, Shuklal, Raisingh and Meharsing, Patels and Mukaddams of the villages mentioned against their names in paragraph 7(c) of the petition? .. Raisingh was the Patel and Mukaddam of the village Suroli; others were not Patels or Mukaddams.

ISSUES	FINDINGS
(b) Were they Government servants? ..	Raisingh was; others were not.
(c) Did Domarsingh, Shuklal, Raisingh and Meharsingh's working as petitioner's polling agents amount to their "assisting the petitioner for the furtherance of his prospects in the election? ..	Raisingh did; No, so far as others are concerned.
6. (a) Is the election held on 22nd February 1953 for the Chauki Legislative Assembly Constituency liable to be declared wholly void or is the election of the Respondent liable to be declared void? ..	The election of Respondent is de- clared void.
(b) To what relief is the Petitioner entitled? ..	The petition suc- ceeds and the election of the Respondent is de- clared void. The Respondent is di- rected to pay the Petitioner's costs and bear his own.

#### REASONS FOR OUR FINDINGS

(5) *Issue No. 1(a) & (b).*—It is clear from the declaration in the nomination form that the Respondent had declared that he was a member of the Gond Tribe which had been declared to be a Scheduled Tribe in the District of Durg in the State of Madhya Pradesh. The 'State' and the 'District' have been mentioned in the declaration in conformity with the contents of the printed form of declaration.

(6) Under section 33(3) of the Representation of the People Act, every nomination paper has to be accompanied by a declaration in writing subscribed by the candidate that the candidate has appointed as his election agent for the election either himself or another person who is not disqualified under the Act for the appointment and by such other declarations as have been prescribed. The law also lays down that no candidate shall be deemed to be duly nominated unless such declaration is or all such declarations are delivered along with the nomination paper. The first Proviso to section 33(3) of the Act enjoins upon a candidate, who claims to be qualified to be chosen to fill a seat reserved for the Scheduled Castes or the Scheduled Tribes, the duty of delivering along with his nomination paper a declaration "verified in the prescribed manner" that the candidate is a member of the Scheduled Castes or of the Scheduled Tribes for which the seat has been so reserved, and of specifying in the declaration the particular caste or tribe of which the candidate is a member and also the area in relation to which such a caste or tribe is one of the Scheduled Castes or Scheduled Tribes, as the case may be. The Petitioner's contention is that the Respondent failed to mention in his declaration the area in relation to which the Gond Tribe had been declared to be a Scheduled Tribe.

(7) It is not disputed before us that the territorial limits of the Chauki Constituency fall within Balod (Sanjari) Tahsil or Durg District. Under the Constitution (Scheduled Tribes) Order, 1950, "Gond" is one of the tribes, which is to be deemed, under section 2 of the Order and the Scheduled attached thereto, as a Scheduled Tribe. Section 2 of the Constitution (Scheduled Tribes) Order, 1950 runs as follows:—

"The tribes or tribal communities, or parts of, or groups within, tribes or tribal communities, specified in Parts I to XIV of the Schedule to this Order shall, in relation to the States to which those Parts respectively relate, be deemed to be Scheduled Tribes so far as regards members thereof resident in the localities specified in relation to them respectively in those Parts of that Schedule."

(8) Part IV in the Schedule gives the different localities in Madhya Pradesh and names the different tribes living in those localities, and, according to section 2, members of those tribes residing in the localities mentioned are to be deemed to be the members of the Scheduled Tribes in relation to the State of Madhya Pradesh. In the first Proviso to sub-section (3) of section 33 of the Representation of the People Act, the area in relation to which a caste or tribe is one of the Scheduled Castes or Scheduled Tribes has to be specified and under section 2 of the Constitution (Scheduled Tribes) Order that area is the entire State and not merely the territorial limits of a Constituency of a State Legislative Assembly. In section 2 of the Constitution (Scheduled Tribes) Order, 1950, the word "area" has not been used. Tribes or tribal communities, or parts of or groups within, tribes or tribal communities, specified in Parts I to XIV of the Schedule attached to the Order (Constitution (Scheduled Tribes) Order, 1950), have in relation to the State to which those parts respectively relate to be deemed to be Scheduled Tribes so far as regards members thereof residents in the localities specified in relation to them respectively in those Parts (Parts I to XIV) of that Schedule.

(9) According to the learned counsel for the Petitioner, the area should have been mentioned as the Chauki Constituency of the Madhya Pradesh Legislative Assembly. This is not correct. Under section 2 of the Constitution (Scheduled Tribes) Order, 1950, a tribe or tribal community is a Scheduled Tribe in relation to a State and not merely in relation to a part of a State. The printed form of the declaration accompanying the nomination paper, therefore, correctly mentions the area as the State of Madhya Pradesh. Members of certain tribes described in Part IV of the Schedule residing only in the localities described in that part are to be treated as the members of the Scheduled Tribes. But the tribe is treated as a Scheduled Tribe in relation to the State and not merely in relation to a Part of the State. The declaration made by the Respondent did not, therefore, in any way violate the first Proviso to section 33(3) of the Representation of the People Act, 1951.

(10) Even assuming that it was necessary to mention the territorial limits of the Constituency or Balod Tahsil, of which the constituency is a part, as the area in relation to which Gond is one of the Scheduled Tribes, the irregularity does not appear to us to be material and, on account of such a technical defect which is not of a substantial character, we do not think the Returning Officer would have been justified in rejecting the nomination paper submitted by the Respondent. The nomination of the respondent was thus properly accepted. We find accordingly on Issue No. 1.

(11) *Issue No. 2(a).*—There is no evidence, except that of Nehrusingh (PW 1), to show that Gonds form a majority of the electors in the Chauki Legislative Assembly Constituency. This was a matter of record and the Petitioner could easily have proved it by producing the necessary documents, but he did not care to do it. We are not prepared to rely on oral evidence for proof of facts which easily can be proved by documentary evidence. We find in the negative on Issue No. 2(a).

(12) *Issues Nos. 2(b) & (c).*—The Petitioner examined Nehrusingh and Bharsingh to prove that the Gond electors who had collected in the weekly market at Mohala were made to swear by Angadeo and Budhadeo, the deities worshipped by the Gonds, that they would vote for the Respondent. According to Nehrusingh (PW 1) the images of these Gond Gods had been brought in the market area and four men carried them. In his cross-examination Nehrusingh (PW 1) admitted that there was only one image and that was of Angadeo and not of Budhadeo. According to Bharsingh (PW 2), Gond electors were only asked to swear by Angadeo and not by Budhadeo. According to him, the people in the meeting only shouted "Budhadeo, Angadeo and Nangadeo Ki Jai". He does not speak about the electors actually swearing by Angadeo. According to him, no idol of a Gond God had been taken to the place where a meeting was held at Pidingpar. The evidence of the witnesses is thus discrepant, and we are not prepared to accept the story about the Respondent's asking the Gond voters to swear by God Angadeo or Budhadeo that they would vote for the Respondent. We would, therefore, find in the negative on Issues Nos. 2(b) and (c).

(13) *Issues Nos. 2(d) and 3.*—There is not an iota of evidence as regards the respondent's posing as a spiritual head of the Gond community. The evidence of Bharsingh (PW 2) does not show that the images of Gond Gods were taken round by the Respondent or his workers. We find in the negative on Issue No. 2(d). We also find in the negative on Issue No. 3.

(14) *Issue No. 4(a) to 4(e).*—Nehrusingh (PW 1) and Bharsingh (PW 2) speak about proclamations made by Kotwars at Mohala that people would not be allowed any Nistar in the banjar and forest area. These witnesses do not appear to us to be straightforward or reliable and on their evidence we are not prepared to hold that any such proclamations were really held in any of the villages. There is not an iota of evidence to show that the Respondent had induced any one to make such proclamations. There is no evidence regarding Shri Mehta's having made a declaration that the villagers would have an absolute right of Nistar in Government forest. Even if such a declaration was made it is immaterial for the purposes of the present case. Nor is there any evidence about wide publication of the alleged restriction on the rights of Chari and Nistar. We find in the negative on issues Nos. 4(a), (b) & (c). Issues Nos. 4(d) and (e) do not arise for determination.

(15) *Issue No. 5(a) & (b).*—There is no evidence to show that Domarsingh, Shuklal, and Meharsingh had accepted the posts of patels and mukaddam or that they worked as such. As regards Raisingh, it is admitted that he had been validly appointed a Patel, and it would appear also from Ex. P-4 that Raisingh actually worked as Patel of Suroli and collected land revenue from Suroli village in December 1952 and January 1953. He deposited the amounts of land revenue in the treasury at Balod. There is, therefore, no doubt that Raisingh was a Patel of Suroli and, therefore, a Government servant within the meaning of the Explanation under section 123(8) of the Representation of the People Act, 1951.

(16) There is no evidence of Raisingh having actually used his influence in support of the Respondent. But he is a Patel of Suroli and was appointed polling agent of the Respondent at the polling station at that very village. We have, therefore, to consider whether the mere fact of Raisingh acting as a polling agent for the Respondent amounted to "assistance for the furtherance of the prospects of the Respondent in the election", and whether the Respondent can, therefore, be held guilty of a major corrupt practice.

(17) That Raisingh as a Patel was a Government servant and his acting as a polling agent amounted to assistance has been conceded on behalf of the Respondent in the course of argument, but it was vehemently urged that this did not amount to any furtherance of the prospects of the Respondent in the election.

(18) The point was canvassed at the Bar in some detail. As a Chairman of the Election Tribunal at Jabalpur in the case of *Shri Narayandas Vs. Manohar Rao* [published in the *Gazette of India (Extraordinary)*, dated the 26th February 1953 at page 542] I had an occasion to consider this question, and the Tribunal gave a finding that a person's merely working as a polling agent did not amount to assistance in furtherance of the candidate's prospects. Our observations in that case were, however, in the nature of *obiter dicta*, because the finding there was that those persons were not Government servants.

(19) Our attention has been drawn to two decisions in which the view taken by the Jabalpur Tribunal has been supported by some of the Members of the Tribunals. In *Shri Maharaj Singh Vs. Shri Ratan Amol Singh & others* (reported in the *Gazette of India Extraordinary*, dated July 16, 1953, decided by the Election Tribunal Ludhiana on 24th June 1953), two out of the three Members came to the conclusion that the pleas raised by the Petitioner regarding corrupt practice could not be considered as in respect of those pleas the petition was barred by time. They therefore gave no decision on the point. The third Member, who was also the Chairman of the Election Tribunal, however, considered the point of corrupt practice and agreed with the Jabalpur Tribunal that the polling agent is a person more to assist the work of polling than to work for the candidate in the polling station. The learned Chairman observed:—

"The assistance must be 'for the furtherance of the candidate's election'. Duties of a polling agent as detailed in the rules, are of a general nature, and he has to see that the election is conducted in accordance with the rules. While discharging these duties inside the polling booth, sitting with the Presiding Officer, it is not possible for him to influence, in any way, the voters coming in the booth to cast their votes. As a matter of fact, unless the polling agent advertises this fact before he comes to the polling booth, it is not possible for any voter to find out, on whose behalf, he is sitting at the booth..... Similarly, he checks any person personating for anybody else. These acts cannot be said to be 'in the furtherance of the prospects of his candidate's election' but, in fact, are in furtherance of a free and fair election and are thus in the interest of all the candidates and

the election as a whole. Unless, therefore, it is proved by evidence that the Lambardar, who acted as a polling agent, advertised this fact outside the polling booth or elsewhere before the polling and thus tried to influence the voters in favour of his candidate, it is not possible to say that by his merely acting as a polling agent of a particular candidate inside the polling booth, he in any way, "assists the particular candidate" in furtherance of the prospects of that candidate's election."

These very considerations had led the Jabalpur Tribunal to take the view it had taken.

(20) The majority decision in *Shri Satya Deo Bushahri Vs. Shri Padam Deo and others* (reported in the *Gazette of India Extraordinary*, dated 19th June 1953, decided by the Election Tribunal, Himachal Pradesh, Simla) also takes the same view as the Jabalpur Tribunal. The two Members, who took the same view as the Jabalpur Tribunal, did not agree with the Patiala Election Tribunal's decisions in Election Petition No. 214 of 1952 (reported in the *Gazette of India Extraordinary* of the 5th February 1953) and Election Petition No. 100 of 1952 (reported in the *Gazette of India Extraordinary*, dated 21st February 1953) (*Shri Lahri Singh Vs. Shri Attarsingh* and *Shri Ghasi Ram Vs. Shri Ram Singh & others*, respectively). The two Patiala decisions were distinguished on the ground that in those cases the influential Government servants who acted as polling agents had actually procured votes for the returned candidates. The Patiala rulings were not, therefore, considered as an appropriate guide for the decision before the learned Members. The third Member, however, wrote a dissenting judgment in the case and has taken a contrary view. The learned Member followed the decision in the two Patiala cases (*Lahri Singh Vs. Attarsingh* and *Shri Ghasi Ram Vs. Shri Ram Singh and others*) and did not agree with the view of the Jabalpur Tribunal. The learned Member (Shri Daulat Ram Prem) has based his decision on the following observations of the Patiala Tribunal in *Ghasi Ram Vs. Ram Singh and others*:—

"We feel driven to the conclusion that the appointment of Mehtab Singh of Igra by Ram Singh as polling agent at Bibipur and his working as such on two days are facts proved beyond all doubt. The crux of this provision of corrupt practice is to prevent a candidate from taking advantage of the influence which a Government servant by reason of his position is supposed to have with the people. It cannot be gainsaid that a member of Debt Conciliation Board can have considerable influence with the rural population of the area within his jurisdiction. When the Government has appointed a person to be a member of the Board and pays him for working as such, he cannot be anything other than a servant of the Government by whatever name one may refer to the emoluments. Further looking to the duties of a polling agent, which are primarily to safeguard the interests of his candidate in the assistance given by the polling agent is in furtherance of the prospects of the candidate's election." (The portions in italics are made by us).

(21) The learned Member Shri Prem has made the following observations in regard to the point under consideration:—

"Law speaks with clear voice and indubitable language when it says that so far as persons serving under the Government are concerned, they can only give their votes. This is the only exception added to section 123(8) of the Act. It necessarily follows that other acts in the conduct of an election are necessarily barred. The mischief guarded against is the interference by Government servants in the election. Appointment of polling agents by a candidate is more for safeguarding the interest of the candidate than for performing a mere public function to preserve the purity of election. If the Polling Agent who is vigilant and knows the people gets few votes of the rival candidate rejected by valid objections, the prospects of the election of his own candidate are considerably increased thereby." (The portions in italics are made by us).

(22) The observations of the Patiala Tribunal were followed by the Election Tribunal at Gorakhpur in *Shri Madan Pal V. Rajdeo Upadhyay & others* (reported in the *Gazette of India Extraordinary*, dated 16th May 1953). The learned Members of the Tribunal observed:—

"The language of sub-section (8) of section 123 clearly shows that the acid test of crux which ought to be applied now in order to determine whether any person alleged to have worked for a candidate as a

person serving under the Government of any State under Clause (b) of the explanation is that the person should not be able to confer any advantage on the candidate of the influence which such person as a Government servant or village officer by reason of his position is supposed to have with the public."

The Tribunal also has endorsed the view of the Patiala Tribunal that the duties of a polling agent are merely to safeguard the interests of the candidate in the election and the assistance given by him is, therefore, in furtherance of the prospects of the candidate's election. (See page 1594).

(23) In Parker's Election Agent & Returning Officer, the relations between the candidate and his agents (and this would apply to election agent, polling agent or counting agent) have been described as follows:—

"Once created the relation between the candidate and his agent is much more intimate than that which subsists between principal and agent at common law (Harwich, 3 O'M & H. 69). The relation is more on the principle of master and servant than that of principal and agent (Westminster, 1 ib., 95; acc. Norwich, ib. 11; Aylesbury, 4 ib. 62, Haggerston, 5 ib. 84); it is not a common law relationship of principal and agent (Taunton, 2 ib. 74; acc. Westminster, 1 ib. 95); but is more analogous to that of a Sheriff and his under-sheriff and his bailiffs (Harwich, 3 ib. 69). It may be likened to the case of the owner of a racehorse and the jockey he employs (Coventry, 1 ib. 107; acc. Blackburn, ib. 202; Wigan, 4 ib. 11); and it has been said that the closest analogy is that of a yacht, which with its captain and crew, is hired by some owner in order that she may fly his colours and race in his name (Wigan, 4 ib. 11)."

(24) Speaking about the duties of a counting agent it has been observed that the counting agent has to see that the Returning Officer and his staff properly perform their duties and object to every objectionable ballot paper given for an opposing candidate and to defend every ballot paper given for their own candidate that may be objected to. These are of course observations relating to the duties of a counting agent and do not apply to a polling agent. About polling agents the learned Author has observed at page 20:—

"The polling agents appointed for the same candidate to attend in the several polling stations at any election, are engaged on the same duty and *in the same interest* and it is generally very desirable that they should meet, under the presidency of the candidate or his election agent, before the opening of the poll for the purpose of mutual discussion and cooperation" (The portion in italics is made by us).

(25) The Election Tribunal at Nowgong (Vindhya Pradesh) has followed the view taken by the Election Tribunal of Patiala in *Shri Ghasi Ram Vs. Shri Ram Singh & others*, in many cases. We have been able to get the reports of four out of them: (1) *Shri Raghunath Singh Vs. Shri Kamta Prasad*, reported in the *Gazette of India Extraordinary*, dated 9th December 1953; (2) *Shri Jang Bahadur Singh Vs. Shri Basant Lal & others*, reported in the *Gazette of India Extraordinary*, dated 9th December 1953; (3) *Ganga Prasad Shastri Vs. Pannalal and others*, reported in the *Gazette of India Extraordinary*, dated 11th December 1953, and (4) *Shri Balchand Vs. Laxminarayan and others*, reported in the *Gazette of India*, dated 15th December 1953.

(26) Section 123(8) of the Representation of the People Act runs as follows:—

"The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person with the connivance of a candidate or his agent, any assistance for the furtherance of the prospects of the candidate's election from any person serving under the Government of India or the Government of any State other than the giving of vote by such person."

It has been pointed out in *Jang Bahadur Singh Vs. Shri Basantlal and others*, that all that a Government servant can do in regard to election is to cast his own vote in favour of any candidate he chooses, and he cannot do anything further. The learned Tribunal observed that they were bound to find that the employment of a Government servant "in any regard" comes within the ambit of section 123(8) and its consequent mischief. It has been pointed out by the learned Members that, even where a Government servant though appointed polling agent



refuses to work, the candidate would be guilty of corrupt practice as he has to be held to have attempted to obtain assistance of such Government servant. In another portion of the judgment the learned Members observed:—

“The very fact that the polling agent can successfully challenge electors likely to cast their votes in favour of a rival candidate is positive proof that the polling agent does advance the cause or further the prospects of his candidate.”

They expressed disagreement with the view that the polling agent's only duty is to see that there is a fair and free election. In the other decisions of this Tribunal the same line of reasoning has been followed.

(27) The learned counsel for the Petitioner also argued that the position of an advocate of a party is similar to that of a polling agent of a candidate. An advocate is supposed always to help the cause of justice and yet he argued,

“who can say that the advocate does not act in furtherance of the cause of the party he represents?”

Similarly, it was argued that a polling agent, though apparently his duty is to prevent personation and to ensure fair election, does represent the interest of the candidate who appoints him his election agent and is interested in doing everything, he consistently with his duties can, to further the prospects of his candidate, if not by a positive act, at least by the negative act of preventing wrong persons from casting their votes in favour of his candidate's adversary, or the same person casting his vote twice for such adversary. The argument of the learned Counsel is not without force in view of the authorities discussed above.

(28) The analogy of the relationship of a candidate and his polling agent with that of an owner of a race horse and the jockey or of the person hiring a ship and its captain and crew, to which reference has been made in Parker's Election Agent and Returning Officer and which vividly brings out the identity of interests between the polling agent and his candidate, and the weighty opinions of the learned Members of Patiala, Gorakhpur, Nowgong (Vindhya Pradesh) and Ludhiana Tribunals compel me to revise my opinion about the position of a polling agent, and I agree with the opinion of my learned colleagues Shri Razak and Shri Rai (with whom I had a detailed discussion) that the view of the Jabalpur Tribunal is not correct.

(29) Raisingh acted as a polling agent at Suroli as would be apparent from the copy of the written authority (sent by the Respondent to the Returning Officer) on record. He was a Patel of the very place and probably knew all the voters of Suroli who were to vote at the village. His presence at the polling station was, therefore, bound to have some effect on the voting at the polling station. It could not, therefore, be said that his acting as a polling agent could not, in any way, further the prospects of Respondent's election. A Patel can be presumed to have some influence over the people of his village. The prohibition against a Government servant's acting as an agent of a candidate or taking any part in an Election (apart from casting his vote) appears to have been based on the assumption that a Government servant has some influence on the people residing within his jurisdiction. The fact that Raisingh was a Patel [and therefore a Government servant within the meaning of Explanation under section 123(8) of the Representation of the People Act] is sufficient to raise a presumption that his acting as a polling agent amounted to “the furtherance of the prospects of the Respondent's election”.

(30) Our conclusions, therefore, are:—

- (i) Raisingh was the Patel of Suroli (and therefore a Government servant) and acted as a polling agent of the Respondent;
- (ii) The very fact of a person's acting as a polling agent amounts to his assisting in furtherance of the prospects of his candidate's election;
- (iii) Raisingh's acting as a polling agent of the Respondent was “assistance for the furtherance of the Respondent's prospects in the election” and the respondent is guilty of a major corrupt practice; and
- (iv) Respondent's election is, therefore, liable to be set aside.

(31) The petition succeeds and is allowed. The election of the Respondent is set aside. The Respondent shall pay Petitioner's costs and bear his own. We see no reason, however, to recommend exemption of the Respondent from the disqualification which the Respondent has incurred under section 141(b) of the Representation of the People Act, 1951.

The 16th January 1954.

(Sd.) N. H. MUJUMDAR, *Chairman*

(Sd.) S. C. RAI, *Member*.

(Sd.) A. RAZAK, *Member*.

### BEFORE THE ELECTION TRIBUNAL, NAGPUR

#### PRESENT:

1. Shri N. H. Mujumdar, *Chairman*.
2. Shri S. C. Rai, *Member*.
3. Shri A. Razak, *Member*.

#### ELECTION PETITION No. 2 OF 1953

1. Shri Sujaniram, son of Dariyaosingh, age 44 years, cultivator of village Koudi Kasa, Tahsil Sanjari Balod, District Durg.—*Petitioner*.

#### Vs.

1. Shri Lal Shyam Shah, son of Lal Bhagwanshah, age 31 years, Ex-Zamindar, resident of Mouza Mohala, Tahsil Sanjari Balod, District Durg.—*Respondent*.

1. Shri R. M. Hazarnavis for the Petitioner, and
1. Shri M. N. Phadke for the Respondent.

#### ORDER OF THE TRIBUNAL

Dated 16th day of January 1954

The Respondent is held guilty of a major corrupt practice under section 123(8) of the Representation of the People Act, 1951, and his election to the Chaukī Legislative Assembly Constituency is set aside under section 100(2)(b) of the said Act. The Petitioner's costs shall be paid by the Respondent who will bear his own. Counsel's fee Rs. 250.

(Sd.) N. H. MUJUMDAR, *Chairman*.

(Sd.) S. C. RAI, *Member*.

(Sd.) A. RAZAK, *Member*.

#### ANNEXURE I

### IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 55 OF 1954

Lal Shyamshah—*Appellant*.

#### Versus

Sujaniram and another—*Respondents*.

Appeal by Special Leave granted by this Court by its Order, dated the 1st March 1954 from the Judgment and Order, dated the 16th January 1954 of the Election Tribunal, Nagpur, in Election Petition No. 2 of 1953.

The 18th day of October 1954

#### PRESENT:

The Hon'ble Mr. Justice Bijan Kumar Mukherjea,

The Hon'ble Mr. Justice Vivian Bose,

The Hon'ble Mr. Justice T. L. Venkatarama Ayyar.

*For the Appellant:* Mr. B. R. Mandlekar, Advocate with Mr. Naunit Lal, Advocate.

*For the Respondent:* Nemo.

JUDGMENT

The Judgment of the Court was delivered by

VENKATARAMA AYYAR, J.—This is an appeal by special leave against the decision of the Election Tribunal, Nagpur, setting aside the election of the appellant to the Legislative Assembly, Madhya Pradesh, from the Chauki Constituency on the ground that he had appointed one Raisingh, the Patel of the village of Suroli to act as his polling agent, and had thereby committed a major corrupt practice under section 123(8). The Tribunal has also found that Raisingh did not actually use his influence in support of the appellant. We have held in Civil Appeal No. 52 of 1954 and in C.M.P. No. 641 of 1954 that the mere appointment of a Government servant as polling agent without more is not an infringement of section 123(8). Following that decision, we allow the appeal, set aside the decision of the Election Tribunal, and dismiss the election petition with costs throughout.

*The 18th October, 1954.*

(Sd.) B. K. MUKHERJEA J.

(Sd.) VIVIAN BOSE J.

(Sd.) T. L. VENKATARAMA AYYAR J.

[No. 82/4/53/19341.]

By Order,

K. S. RAJAGOPALAN, Asstt. Secy.

